

Rent reviews: go back to Law Reform body



[The IFSC, Dublin 1: would not be there but for investors in Irish property](#)

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OPINION: Proposals for immediate upward and downward rent reviews are frightening off investors

NOW THAT the heat of the recent election and the prancing of pressure groups are calming the purpose of this article is to look at the background to rent reviews in Ireland in the context of the new Government's policy to introduce downward rent reviews in existing leases and the hullabaloo this has caused in investment circles.

Why does the relationship of landlord and tenant exist at all? Well, tenants want to use land and buildings owned by someone else. Landlords, who are investors, want an income in return for giving the use and occupation of their property. The equation has been in operation since mankind emerged from the cave.

The amount of rent payable at the beginning of any lease is left to the two parties to hammer out on the principle that the landlord will want to get the going market rate for his building having regard to its size, condition and location, and the tenant will not pay more than the going rate.

Generally in bygone days the leases were for short periods of a year or so (or much longer for site leases) and at the end of the lease period the tenant could exit the building or the landlord could recover possession. But in more modern times, lease lengths became extended because tenants wanted to have greater security so that if they spent money on adapting the building they had time to

recover their expenditure and also did not want to have the bother of shifting their home/business every year or so.

On the other hand, landlords liked the prospect of having a more reliable stream of income and were willing to grant longer leases. But then came the problem of how to determine the rent level in a new or continuing lease in a way that was fair and equitable.

This lengthening and renewal of leases' terms led to the conflict about alternative methods of adjusting the rent to market levels, the options being termination, indexation, the courts or third party adjudication.

This is where governments over the centuries have interfered in different ways in striking rents and where politics, law and tenant pressure groups have clashed with property ownership rights. History books worldwide are full of the conflicts engendered by this issue. Indeed in Ireland the continuing clashes over the rights of landlords and tenants provoked civil unrest in the 17th, 18th, and 19th centuries – mainly over the leasing of agricultural land.

The demands of tenants became known as the Three Rs – the right to fair rent, the right to lease renewal and the right to benefit from improvements. Nothing is new in real estate!

Balancing these rights is a complex matter that involves many interrelated issues. They have been considered again and again by governments and their advisory groups across the democratic world. These advisory groups usually came up with well-reasoned recommendations for legislation appropriate to the relevant local environment, taking into consideration the type of property, type of tenant and type of user. Usually governments accept the advice of such learned and balanced groups and introduced appropriate legislation based on logic, economics and the socio-political environment.

In Ireland the most recent fundamental examination of the relationship between landlords and tenants was carried out by our Law Reform Commission in 2003. This august and independent body looks regularly at all aspects of law to keep it up to date and relevant to current conditions. It is chaired by a High Court judge and is comprised of expert legal and professional members. Their comprehensive report in 2003 examined the subject of landlord and tenant law. In addressing the issue of rent reviews it noted that the position of residential tenants and commercial tenants was quite different. It noted that residential tenants should be entitled to a process to determine a fair rent (introduced in 2004) but said the following about commercial rents:

The Commission is clear that it would not be appropriate to impose a mandatory statutory scheme. This would run counter to one of the guiding principles stated in the Consultation Paper on Business Tenancies 36 and reiterated earlier in this

Paper 37 namely, “removal of legislative provisions which militate against commercial practice and operation of free market choice”. (Page 116)

To put rent reviews in full context the Government needs to consider the bigger picture – and not the high street shop which has been the focus of the recent fuss. It needs to think about our modern cities and the many commercial buildings in them that house our businesses and our industries. Who paid for these buildings? Who will pay for further new buildings? Ireland has undergone a huge urbanisation programme and much of the money for those new buildings has come from professional property investors including pension funds and international financiers. The IFSC, and many other modern buildings, such as Liffey Valley Shopping Centre, would not be there today if such investors did not invest in Irish property. Such investors have the option to place their funds from “Moscow to Mexico” and all places in between.

What has all this to do with rent reviews? Two things: firstly modern commercial tenants usually want leases of 10 years plus. Secondly investors want a mechanism to keep their rent in line with market levels. Enter the modern rent review formula. The reason for the upward-only provision relates to the risk to the cash flow because income with a certainty of 10 or 15 years or longer is priced higher than short term or variable income – one of the basic laws of modern finance.

We seem to have short memories with regard to the importance of attracting capital into Irish urban renewal projects. Back in 1986, when we were trying to get the IFSC off the ground, it was necessary to put together a concoction of tax reliefs to attract investors and international occupiers.

The current proposals for immediate upward and downward reviews are frightening off international property investors. The very minimum the Government should do is refer the issue of rent reviews back to the Law Reform Commission or a similar body which could carry out a balanced and pragmatic analysis reflecting all aspects of this critically important and urgent matter.

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